

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 276

This is an advisory opinion in response to your letter requesting advice from the Ethics Commission as to how to avoid becoming involved in conflict of interest situations once you begin working for the City.

The Commission understands the facts relative to your inquiry to be as follows:

You were nominated by the Mayor to serve as the director of a City department (the "Department"). You will become acting director of the Department effective February 1, 1997, and you want to avoid potential conflicts of interest in your City position.

You are an attorney who has practiced law in the area of land use for the past thirteen years, mostly at the state level. You have now dissolved the law firm partnership and terminated your relationship with all of your clients. Your collectibles will be cleared by the end of January, leaving no accounts receivable. Your spouse is president of a firm ("XYZ"). On occasion, XYZ is involved in work that requires a permit from the Department.

It is your intention to recuse yourself from the administration, processing, or decision-making associated with any project with which you were previously involved. You also intend to recuse yourself from any matter that comes before the Department from XYZ. In such cases, the matter will be assigned to the Deputy Director for oversight and the appropriate staff member for processing.

The ethical question presented is: what must you do as the acting director of the Department in order to avoid conflicts of interest created by projects on which you previously worked or projects in which XYZ is involved.

The general rules in relation to your question are found in the Revised Charter of the City and County of Honolulu 1973 (1994 Ed.) [RCH]. Section 11-102 (c) states in pertinent part:

No elected or appointed officer or employee shall... [e]ngage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of such person's official duties or which may tend to impair the independence of judgment in the performance of such person's official duties.

Section 11-104, RCH, entitled *Fair and Equal Treatment*, states as follows:

Elected or appointed officers or employees shall not use their official positions to secure or grant special consideration, treatment, advantage, privilege or exemption to themselves or any person beyond that which is available to every other person.

While you have eliminated your financial interest from your legal activity, XYZ continues to be a financial interest under the relevant ethics laws since your spouse is its president. Therefore, you are required to recuse yourself from any matters coming before the Department from XYZ,

since your independence of judgment may tend to be impaired.

Based on the evidence presented, the Commission unanimously finds that if you recuse yourself from all matters dealing with projects on behalf of which you were previously employed and all matters coming to the Department from XYZ, you will avoid creating a conflict of interest. This opinion is based on the assumption that you will observe the restrictions of the *Fair and Equal Treatment* provision of the Charter with great care.

Dated: January 28, 1997

GOLDIE D. BRANGMAN-DUMPSON
Chair, Ethics Commission